

**HEADQUARTERS
UNITED STATES FORCES KOREA
UNIT #15237
APO AP 96205-5237**

**USFK Regulation
No. 1-27**

19 May 2004

**(Effective 20 May 2004)
Administration**

SETTLEMENT OF TORT CLAIMS AND NON-COMBAT ACTIVITY CLAIMS IN KOREA

SUPPLEMENTATION. Supplementation of this regulation and issuance of command and local forms are prohibited without prior approval of the Commander, USFK (FKJA-CSK), Unit #15237, APO AP 96205-5237.

INTERNAL CONTROL PROVISIONS. This regulation does not contain management control checklists.

1. PURPOSE. This regulation implements AR 27-20 and DODD 5515.8, which assigns to the United States (U.S.) Army responsibility for processing all tort claims and non-combat activity claims arising in Korea.

2. APPLICABILITY. This regulation applies to all tort claims and non-combat activity claims arising in Korea and to all units, organizations, and agencies assigned or attached to, or under the jurisdiction of the U.S. Forces Korea.

3. REFERENCES.

a. Required Publications.

(1) AR 27-20 (Legal Services, Claims). Cited in paragraphs 1, 5, 8c(1), 8c(2) and 9c(1).

(2) DOD Directive 5515.8 (Single Service Assignment of Responsibility for Processing of Claims). Cited in paragraph 1.

(3) Navy JAGINST 5890-1 (Administrative Processing and Consideration of Claims on Behalf of the United States). Cited in paragraph 7d.

b. Related Publication. Agreement Between the United States and the Republic of Korea Regarding Facilities and Areas and the Status of United States Forces in the Republic of Korea.

***This regulation supersedes USFK Reg 1-26, dated 28 January 1980 and USFK Reg 1-27, dated 8 September 1989.**

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4. ABBREVIATIONS.

DOD	Department of Defense
JA(s)	Judge Advocate(s)
ROK	Republic of Korea
SJA	Staff Judge Advocate
SOFA	Status of Forces Agreement
U.S.	United States (of America)
USAFCS-K	United States Armed Forces Claim Service-Korea
USFK	United States Forces, Korea

5. RESPONSIBILITIES. The Commander, USAFCS-K, under the operational control of the JA, USFK, is responsible for implementation of AR 27-20. Unit commanders, unit claims officers, and JAs are responsible for compliance with all pertinent provisions of AR 27-20 and the implementing procedures set forth in this regulation.

6. POLICY. The policy of USFK is to promote just, efficient, and expeditious processing of all claims arising within the command. The accomplishment of this result requires total cooperation on the part of the unit claims personnel. The investigation of claims must be conducted thoroughly and objectively, without preconceived determinations regarding the merits of the matter under consideration.

7. PROCEDURES.

a. An incident which results, or may result, in a tort claim against or in favor of the U.S. Government will be brought to the attention of the claims office of the staff judge advocate (SJA) servicing the involved unit or area.

b. The claims officer or SJA receiving such information or tort claim will investigate the matter or claim in accordance with the appropriate Service claims regulations and forward it to the Commander, USAFCS-K, for further processing and final settlement. For Navy commands, the claim will be investigated by the command concerned.

c. Under no circumstances will a tort claim be settled, denied, or asserted without prior consultation with and approval by the Commander, USAFCS-K.

d. In certain circumstances, the Navy JAGINST 5890.1, gives authority to commanders of ships visiting Korea to settle claims under \$2,500. USAFCS-K will be advised of all claims settled under this authority.

8. CLAIMS FILED PURSUANT TO THE US-ROK SOFA.

a. Filing Procedures.

(1) With the exception of paragraph 8(b) below, all claims cognizable under the US-ROK SOFA will be filed with the ROK District Compensation Committee having jurisdiction over the area where the loss occurred or where the claimant lives.

(2) The following claims are outside the scope of the SOFA claims procedures and will be filed directly with the USAFCS-K: claims based on maritime incidents and claims resulting from the acts or omissions of members of the Joint U.S. Military Advisory Group, Korea; Special U.S. Liaison Advisor, Korea; or other DOD personnel not covered by the SOFA.

b. Advance Payments.

(1) The SOFA Civil Jurisdiction Subcommittee Agreed View No. 3 (Appendix A) encourages mutual cooperation between the U.S. and the ROK regarding advance payments as set forth in the US-ROK SOFA.

(2) For claims that arise from in-scope activities, the District Compensation Committees are required to process advance payments. Claimants must use the procedure and format to request advance payments set forth by the District Compensation Committee.

(3) For claims that arise from non-official activity, claimants may request an advance payment by submitting a Form A, "Request for Advance Payments in Non-Official Cases" (Appendix B) to the appropriate District Compensation Committee. Before an advance payment is made in such cases, USAFCS-K must first evaluate the claim and, if it determines an advance payment is warranted, the claimant must execute an Advance Payment Acceptance Agreement.

c. Ex-Gratia Claims.

(1) For ex-gratia claims resulting from the acts of USFK personnel outside the scope of duty, a Foreign Claims Commission will be convened to determine liability and, if appropriate, the amount of damages. The statutory limitations for payments set forth in the Foreign Claims act and implemented in Chapter 10, AR 27-20 will apply in these situations.

(2) In determining liability for ex-gratia claims resulting from the acts of USFK personnel outside the scope of duty, the Foreign Claims Commission will use host nation law in determining the liability of the U.S. Government, tempered by the requirements of Chapter 10, AR 27-20.

9. AFFIRMATIVE CLAIMS.

a. Assertion. USAFCS-K will assert all tort claims that result, or may result, in favor of the U.S. Government.

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b. Investigation. Unit commanders, unit claims officers, and JAs are responsible for identifying potential affirmative claims and reporting them to USAFCS-K. Unit Commanders, unit claims officers, and JAs may be required to assist USAFCS-K in investigating such claims and determining the estimated cost of damage to tangible U.S. Government property and the value of medical care furnished, or expected to be furnished, by the U.S. Government.

c. Collection. Only USAFCS-K, is authorized to assert a demand and collect compensation for affirmative claims on behalf of the U.S.

(1) When money is collected for property damage to U.S. Armed Forces property, to include U.S. Government vehicles, it is deposited by USAFCS-K into the account authorized by Congress and AR 27-20. Currently, funds recovered for damage to real property are deposited into the installation account for the repair of real property, but there is currently no authorization to spend these funds locally. Funds recovered for damage to other appropriated fund property are currently deposited in a central U.S. Treasury account.

(2) When money is collected for medical expenses furnished to a service member or U.S. Government employee entitled to medical care by the U.S. Government, the money is deposited into the account for the servicing medical treatment facility. If multiple U.S. Government medical treatment facilities treated the individual, the money will be apportioned accordingly among the facilities providing treatment.

(3) When money is collected for wages paid to a service member while the service member was unable to work due to injuries related to the claim, the payment is forwarded to the appropriation supporting the operation of the installation to which the service member was assigned at the time of injury.

Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Commander, United States Armed Forces Claims Service-Korea (FKJA-CSK), Unit #15311, APO AP 96205-5311. This regulation is available electronically at: <https://www-eusa-4.korea.army.mil>.

FOR THE COMMANDER:



F. W. MORRIS
Assistant Adjutant General

OFFICIAL:
CHARLES C. CAMPBELL
Lieutenant General, USA
Chief of Staff

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APPENDIX A



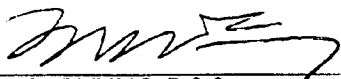
SOFA CIVIL SUBCOMMITTEE AGREED VIEW NO. 3
CIVIL JURISDICTION (CLAIMS) SUBCOMMITTEE
UNDER
THE UNITED STATES AND THE REPUBLIC OF KOREA
JOINT COMMITTEE, STATUS OF FORCES AGREEMENT

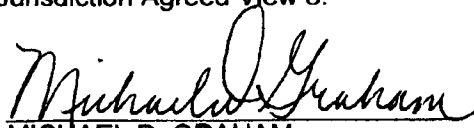
MAY 28 2003

MEMORANDUM FOR THE JOINT COMMITTEE

SUBJECT: Recommendation of the Civil Jurisdiction Subcommittee – Task CJC-03-01

1. Reference Task CJC-03-01, a ROK request to review SOFA Article XXIII.
2. Recommend approval of the attached Civil Jurisdiction Agreed View 3.


JUNG, BYUNG-DOO
Director of Litigation Division, MOJ
Chairman, ROK Component
Civil Jurisdiction Subcommittee



MICHAEL D. GRAHAM
Lieutenant Colonel, U.S. Army
Chairman, US Component
Civil Jurisdiction Subcommittee

Attachment:
Agreed View 3

MAY 30 2003

MEMORANDUM FROM THE JOINT COMMITTEE

Civil Jurisdiction Agreed View No. 3 is approved by exigent action of the Joint Committee.


SHIM YOON JOE
Director General, North American Affairs
Ministry of Foreign Affairs and Trade
Republic of Korea Representative


LANCE L. SMITH
Lieutenant General
United States Air Force
United States Representative

CIVIL JURISDICTION

Agreed View No. 3

9 May 2003

MUTUAL COOPERATION IN NON-OFFICIAL CLAIMS

1. Paragraph 6, Article XXIII of the United States-Republic of Korea Status of Forces Agreement (US-ROK SOFA) provides that authorities of both Parties shall assist each other in the settlement of claims against members or employees of the US armed forces arising out of tortious acts or omissions in the ROK not done in the performance of official duties. In light of this, the Parties have long shown deep and compassionate consideration in promoting procedures to facilitate ex-gratia payment (payment as a matter of favor, not as a legal duty) by US authorities, where appropriate, as a means to promote and maintain friendly relations.

2. Intending further to improve this record of mutual cooperation and to expedite advance payments in appropriate cases, both Parties agree to:

a. Cooperate in developing procedures that promote rapid consideration and broad understanding of the conditions necessary for advance payment by the US.

b. Cooperate in disseminating information to the Korean public to include the ROK government's role in processing claims, US authority to make advance payments, the distinction between solatium payments and claims, average processing times, eligible claimants, and other factors considered in adjudicating a claim. Special emphasis will be given to the availability of advance payments in appropriate cases.

c. Cooperate in creating a new ROK government claims form specifically designed for advance payments.

d. Cooperate in processing advance payments claims in a timely manner for victims or their families. For this purpose, the ROK will transmit the advance payment claims form as expeditiously as possible, but no later than 48 hours after receiving appropriate documentation. Thereafter, US will make all reasonable efforts to ensure that the request for advance payment will be promptly considered and to execute the advance payment within 48 hours, in appropriate cases.

3. Nothing in this agreement shall be construed to implement a change contrary to, or in derogation of the SOFA, as amended, or previously agreed Minutes, Understandings, and Views that implement the SOFA.

4. These procedures will take effect upon approval of the Joint Committee.

APPENDIX B

FORM A, REQUEST FOR ADVANCE PAYMENTS IN NON-OFFICIAL CASES

[별지 제1호 서식]

비공무사건 사전지급 신청서

REQUEST FOR ADVANCE PAYMENTS IN NON-OFFICIAL CASES

일자 :

Date:

정리번호:

File Number:

접수경유: _____ 지구배상심의회 Submitted thru: _____ District Compensation Committee 접수처: 주한미군배상사무소장 귀하 Submitted To: Commander, US Armed Forces Claims Service, Korea 아래와 같이 군대지위협정 제23조제6항에 따라 급히 필요한 사전지급을 신청합니다. I hereby submit a request for advance payment of immediate needs in accordance with Paragraph 6, Article XXIII of the RCK-US SOFA, as follows			
1. 신청인 Requester			
(1) 성명 Name:		(인) Signature	
(2) 주소 Address:		(3) 나이 Age:	
(3) 나이 Age:		(4) 직업 Occupation:	
(6) 혼인관계 Marital Status:		(7) 피해자와의 관계 Relation To Injured Party:	
		(5) 성별 Sex:	
		(8) 주민등록번호 Korean ID No.:	
2. 신청금액 Amount of requested advance payment			
본인은 _____ 이유로 _____ 등 비용에 대하여 사전지급금이 즉시 필요함. I have an immediate need for the advance payment of _____ expenses for the following reasons:			
사전지급금 요하는 시급한 비용은 다음과 같음 My immediate expenses are in the following amounts			
치료비: Medical Treatment:	원 Won	장례비: Funeral Rites:	원 Won
합계: Total:	원 Won		
3. 피해자 Victim			
성명: Name:		생년월일: Date of Birth:	
성별: Sex:	혼인관계: Marital Status:	직업: Occupation:	
주소: Address:		본적: Permanent Address:	
피해유형 Type of Damage:	사망 Death	상해(치료기간 주) Personal Injury (Duration: weeks)	기타(특정할 것) Other (please specify)
4. 사건개요 Details of Incident			
발생일시: Date and Time of Incident:			
발생장소: Location of Incident:			
가해자 U.S. Party	성명: Name:	계급: Grade:	소속부대명: Organization:
사건내용(필요시 별지 첨부) Description of Incident, (attach separate sheet if necessary)			

양식
Form A

5. 첨부서류 Enclosures										
6. 비 고 Remarks										
<p>본 신청인은 이 신청금액이 다만 상기사건으로 인하여 야기된 적법하고 급박한 필수비용을 위한 것이며, 기가제 사항은 조금도 불평없이 정확하고 진실임을 선언함. 본인의 사전지급신청에 대한 인가여부는 미합중국 법률에 따라 결정될 제당사항임을 이해함. 또한, 본인은 미합중국의 사전지급 인가결정이 본 사건에 대한 미합중국의 법적인 책임 또는 기타 책임을 인정하는 것이 아님을 이해함. 더욱이, 본인은 미합중국으로부터 받은 사전지급금액이 동 사건과 관련하여 본인이 제출하는 손해배상청구에서 최종 합의될 손해배상금액으로부터 공제된 것임을 이해함. 또한, 본인은 만일에 미합중국에게 동 사건에 대한 법적 책임이나 기타 책임이 없다고 인정되면 본인이 받은 사전지급금을 미합중국에 반환할 것에 동의함.</p> <p>I declare that the amount of this request covers only legitimate and immediate needs arising from the incident described above, and that the foregoing information is true and correct in every particular. I understand that the decision whether to approve my request for an advance payment is a matter of discretion to be decided in accordance with the laws of the United States. I also understand that the approval of an advance payment requested by the United States of America does not constitute an admission by the United States of legal responsibility or other liability for the incident described herein. I further understand that any advance payment I may receive from the United States of America will be deducted from any award made in final settlement of any claim I make relating to this incident. I also agree to repay to the United States of America any advance payment I receive if the evidence later shows that the United States bears no legal responsibility or other liability for the incident.</p>										
위 신청인 _____ 인 Requester Signature										
증명 Certificate	상기 번역은 정확함을 증명함 Certified true translation: 서명: _____ Signature: 성명과 직책: _____ Name and Title: 일자: _____ Date:									
<u>신청서를 제출하는데 있어서의 주의</u>										
1. 신청서는 신청인의 주소지 거주지 또는 사고발생지를 관할하는 지구배상 심의회에 제출하여야 함 2. 대리인에 의하여 신청을 할 때는 위임장을 첨부할 것 3. 신청서에는 열표에 해당하는 서류와 주민등록증본, 호적등본 및 사고발생증명을 첨부할 것 4. 신청인이 피해자가 아닐 때는 반드시 신청한 권리 있음을 증명하는 서류 등을 첨부하여야 함 5. 필요하면 추가용지를 사용할 것	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">종 류</th> <th style="width: 45%;">신 청 원 인</th> <th style="width: 40%;">첨 부 서 류</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: middle;">치 료 비</td> <td style="vertical-align: middle;">미군 또는 미군속의 비공무중 사고로 인하여 부상을 입고 치료를 요하는 경우</td> <td style="vertical-align: middle;">1. 의사의 증명서 또는 진단서 2. 치료비 청구서 또는 영수증</td> </tr> <tr> <td style="vertical-align: middle;">장 래 비</td> <td style="vertical-align: middle;">생명을 잃었을 때</td> <td style="vertical-align: middle;">1. 사망진단서(사체검안서) 2. 장례비 증명서</td> </tr> </tbody> </table>	종 류	신 청 원 인	첨 부 서 류	치 료 비	미군 또는 미군속의 비공무중 사고로 인하여 부상을 입고 치료를 요하는 경우	1. 의사의 증명서 또는 진단서 2. 치료비 청구서 또는 영수증	장 래 비	생명을 잃었을 때	1. 사망진단서(사체검안서) 2. 장례비 증명서
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양식
Form A